

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JAMES FRANK,
Plaintiff,

vs.

**ODFJELL TERMINALS
(HOUSTON) INC.,**
Defendant.

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CIVIL ACTION NO. _____
Jury Demanded

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

NOW COMES, Plaintiff James Frank and files this Plaintiff’s Original Complaint
against Defendant, ODFjell Terminals (Houston) Inc.

A. Background

1. This is a proceeding against Defendant for violating the overtime pay provisions of the Fair Labor Standards Act of 1938, 29 U.S.C. §201 et. seq. (or “FLSA”). Plaintiff is a former nonexempt employee of Defendant, and regularly worked in excess of 40 hours per workweek. However, Defendant failed to pay Plaintiff corresponding overtime compensation in violation of the FLSA.

B. Parties

2. Plaintiff James Frank is an individual and a resident of the state of Texas. Plaintiff brings this action pursuant to 29 U.S.C. §216(b). Plaintiff worked as a Terminal

Operator at ODFjell Terminals (Houston) Inc., a premier supplier company to the liquid bulk chemical industry, located at 13100 Space Center Blvd., Suite 600, Houston, Texas 77059. Plaintiff, a former employee of Defendant, was paid by the hour and within the last three years worked more than forty hours in a workweek but was not paid overtime wages.

3. Defendant ODFjell Terminals (Houston) Inc., is a Texas corporation, conducting business in Texas. Defendant constitutes an “employer” within the meaning of 29 U.S.C. § 203(d). Defendant may be served with summons by serving its registered agent: C T Corporation System, 1999 Bryan Street, Suite, 900, Dallas, TX 75201-3136.

C. Jurisdiction and Venue

4. The court has federal question jurisdiction, 28 U.S.C. §1331, over Plaintiff’s claims of unpaid overtime, because these actions arise under federal law, via the Fair Labor Standards Act of 1938, 29 U.S.C. §201 *et seq.*

5. Venue is proper in this district because all of the relevant events took place in this District.

D. Facts

6. Plaintiff is a former employee of Defendant.

7. Plaintiff worked for Defendant as a Terminal Operator from 2004 to 2014.

8. ODFjell Terminals (Houston) Inc. is a premier supplier company to the liquid bulk chemical industry.

9. During his years of employment, Plaintiff worked 6:00 AM - 6:00 PM Monday through Sunday (12 hours per day, 7 days per week). Plaintiff did not take regular breaks or vacations at work.

10. Plaintiff generally worked in excess of 40 hours per week; however Defendant did not pay all earned overtime.

11. At all times relevant to this lawsuit, Plaintiff is nonexempt under the FLSA and should be compensated for appropriate overtime at a rate of one and one half the regular hourly rate.

12. At Defendant's direction and for the benefit of Defendant, Plaintiff regularly worked in excess of 40 hours per workweek. However, Defendant did not compensate Plaintiff for all the overtime wages that were owed.

13. Defendant regularly required Plaintiff to work mandatory 6 days straight even when Plaintiff was physically ill and hospitalized, by relegating Plaintiff to light duty instead of reasonably accommodating Plaintiff with time off.

14. Defendants regularly warned and threatened adverse employment action against Plaintiff if any overtime was reported or complained about.

15. All conditions precedent to the filing of this suit have been satisfied.

E. Violation of FLSA: Unpaid Overtime

16. As illustrated in paragraphs 6-15, Defendant maintained a practice of requiring Plaintiff, a nonexempt employee, to work more than 40 hours per workweek. For failing to pay Plaintiff for corresponding earned overtime, Defendant violated the wage and hour provisions of the FLSA.

Plaintiff asserts her rights under the Seventh Amendment to the U.S. Constitution and demand, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

F. Prayer

17. For the foregoing reasons, ODFjell Terminals (Houston) Inc. should be cited to appear and answer, and upon final hearing the Court should enter judgment in favor of Plaintiff James Frank and against ODFjell Terminals (Houston) Inc. for the following:

- a. Actual damages, as measured by back overtime payments, 29 U.S.C. §216(b),
- b. Liquidated damages in the same amount as the back overtime payments, 29 U.S.C. §216(b) and/or prejudgment interest,
- c. Application of the three-year statute of limitations for willful FLSA violations, 29 U.S.C. §255(a),
- d. Attorneys' fees and costs of suit, 29 U.S.C. §216(b),
- e. All other relief the court deems necessary and appropriate.

Respectfully submitted,

By: /s/Shelly M. Davis-Smith

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